THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.3579 OF 2005

DATED: 10th April, 2006.

Between :

M/s. Balaji Gas Enterprises, rep. by its Proprietor,
R. Naga Pinaki Reddy, S/o. R. Nageswara Reddy,
Aged about 40 years, R/o. H.No.3-54, Nandyala Road,
Banaganapalli, Kurnool District. … Petitioner

And

1. Union of India, rep. by its Secretary, Ministry of Petroleum and Natural Gas, Central Secretariat, New Delhi, and 3 others. … Respondents

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ORDER :

The writ petitioner – M/s. Balaji Gas Enterprises is a distributor of LPG at Banaganapalli, Kurnool District, having been appointed so by the 2nd respondent – M/s. Bharat Petroleum Corporation. It is stated that as per the agreement executed by the 2nd respondent-Corporation, petitioner has been appointed as the distributor of LPG at Banaganapalli and its surrounding areas/villages with a radius of 15 Kms from Banaganapalli.

It is not in dispute that the 4th respondent is also a distributor of LPG. However the 4th respondent is a distributor of 3rd respondent - Hidusthan Petroleum Corporation operating at Bethamcherla, which is about 25 Kms away from Banaganapalli.

While so, in the month of March, 2003 the petitioner was permitted by the 2nd respondent Corporation to open an extension counter at Kovelakuntla village which is about 13 Kms away from Banaganapalli. The petitioner had all the requisite facilities for LPG storage and distribution at Kovelakuntla. It is stated that as a matter of fact the petitioner is an unviable distributor as per the norms fixed by the Government of India, since its refill sale position per month never exceeded 200 refills, including sales of extension counter at Kovelakuntla.

It is alleged that the 3rd respondent Corporation though was very well aware that the petitioner's extension counter had been in existence at Kovelakuntla, permitted its distributor – respondent No.4 to operate another extension counter at Kovelakuntla. Petitioner alleges that the said action of the 3rd respondent in permitting respondent No.4 to open another extension counter at Kovelakuntla is in total violation of the guidelines evolved by the marketing companies, which prescribe closure of extension counters of old distributors and transfer of customers etc., in favour of new and unviable distributors.

Hence, this writ petition seeking a declaration that the action of the 3rd respondent in permitting the 4th respondent to open / operate an extension counter at Kovelakuntla which adversely affected petitioner's economic viability is arbitrary, illegal and contrary to their own self-imposed restrictions issued by the 3rd respondent Corporation in its proceedings dated 10-5-2001.

The 3rd respondent Corporation filed a counter-affidavit stating that both the writ petitioner and the 4th respondent – M/s. Gokul Gas Agency were commissioned in the month of January, 2001 under the Marketing Plan 1994-96 of the Ministry of Petroleum and Natural Gas, Government of India. It is further stated that as per the guidelines issued by the Ministry of Petroleum & Natural Gas, applicable to the distributorships commissioned under Marketing Plan 1994-96, the trading area or area of operation shall be limited to the respective Municipal or Panchayat limits. Since both Bethamcherla and Banaganapalli are village panchayats, their trading area or area of operation shall be limited to the respective village Panchayat limits. Therefore, the claim of the petitioner that it has got trading area of 15 Kms radius from Banaganapalli is incorrect and it has no right of operation, or claim over Kovelakuntla, which falls outside the defined trading area of the petitioner. It is further stated that the Joint Collector, Kurnool sanctioned gas connections in Kovelakuntla during 16th, 17th, 18th and 19th Janma Bhoomi and Kotivaralu as well as Deepam Programmes at Kovelakuntla. For effective implementation of the said programmes, the Joint Collector, Kurnool vide proceedings dated 10-3-2003 permitted the 3rd respondent Corporation to operate an extension counter at Kovelakuntla. Prior to that, the distributors of the 3rd respondent Corporation at Nandyal were offering their services to the consumers in Kovelakuntla area since

1984, even much prior to the commissioning of the 4th respondent – distributorship at Bethamcherla. After commissioning of the 4th respondent distributorship at Bethamcherla, the 3rd respondent Corporation by letter dated 13-12-2001 granted permission to the 4th respondent to undertake supply of refills to the existing HP consumers of Kovelakuntla for the past two decades. Since March, 2003, the 4th respondent has also been operating its extension counter at Kovelakuntla. The petitioner, who was permitted to operate extension counter only on vide letter dated 25-3-2003 has no right to operate any extension counter at Kovelakuntla. Hence, the extension counter of the petitioner is required to be closed down as per the guidelines issued by the Ministry of Petroleum and Natural Gas, Government of India. It is also stated that the 4th respondent's distributorship at Bethamcherla is also an economically unviable distributorship, and therefore, it is necessary to improve its viability by permitting to establish and operate an extension counter at Kovelakuntla.

A separate counter-affidavit has been filed by the 4th respondent on the same lines.

I have heard the learned Counsel for both the parties and perused the material on record.

From the pleadings of the respective parties, it is to be noted that the petitioner and the 4th respondent are the distributors of different oil companies operating at Banaganapalli and Bethamcherla respectively. It is claimed by both the distributors that they are economically unviable. Now, the controversy raised in this writ petition is with regard to operation of an extension counter at Kovelakuntla which is about 13 Kms away from Banaganapalli.

Admittedly, the distributors of the 3rd respondent Corporation at Nandyal were offering their services to the consumers in Kovelakuntla area since 1984 onwards till 2001. After the 4th respondent commissioned the distributorship at Bethamcherla, vide letter dated 13-12-2001 the 3rd respondent Corporation permitted the 4th respondent to undertake supply of refills to the consumers at Kovelakuntla area. That apart, the Joint Collector, Kurnool vide proceedings dated 10-3-2003 permitted the third respondent Corporation to operate an extension counter at Kovelakuntla.

On the other hand, the writ petitioner claimed that it was granted permission by the 2nd respondent Corporation on 25-3-2003 to open an extension counter at Kovelakuntla. Thus, apparently, the permission granted to the writ petitioner for operating an extension counter at Kovelakuntla was later in point of time and by that time the 3rd respondent Corporation was already catering to the needs of the consumers in that area. However, the petitioner claims that the operating area of its distributorship at Banaganapalli includes Kovelakuntla which is only 13 Kms away since under the agreement the area of operation was described as Banaganapalli and 15 kms radius. The said claim was seriously disputed by the 3rd respondent Corporation stating that as per the Marketing Plan 1994-96 of the Ministry of Petroleum and Natural Gas, Government of India, under which both the writ petitioner and the 4th respondent distributor were commissioned, the area of operation shall be limited to the respective panchayat limits. It is also contended that Kovelakuntla falls outside the Panchayat limits of Banaganapalli.

In support of his contention, the learned Standing Counsel for the 3rd respondent Corporation placed before this Court the Circular dated 14-2-2000 issued by the Government of India, Ministry of Petroleum and Natural Gas, in which it was made clear that the distributor in urban/rural location/market will be operating within the municipal limits or the Panchayat limits. It was also made clear that the said guidelines shall be implemented w.e.f. 1.3.2000, whereas the petitioner distributor ship was commenced in the month of June, 2001. Hence, I do not find any substance in the contention of the petitioner that Kovelakuntla falls within the area of the operation of his distributorship.

However, the petitioner while relying upon the proceedings of the Union of India, dated 16-10-2001 as clarified in the subsequent proceedings dated 1-2-2002, contended that in view of the guidelines issued thereunder, the 3rd respondent Corporation ought not to have permitted the respondent No.4 to operate an extension counter at Kovelakuntla since the same would affect the economic viability of the petitioner.

The relevant portion from the letter dated 17-9-2001 addressed to all the Oil Companies may be extracted hereunder :

> *"It is advised that you may kindly look into the matter personally and ensure that all extension counters which are operating in the trading areas*

of newly commissioned LPG distributorships must be closed down immediately irrespective of the fact that the same have been opened with the concurrence of the management of concerned Oil Marketing Companies or otherwise. After closing down the extension counters, customers served through these counters be transferred immediately to newly commissioned distributorships of the respective areas."

From the above, it is clear that the Oil Companies were advised to ensure that all extension counters which are operating in the trading areas of newly commissioned LPG distributorships must be closed down immediately.

In the case on hand, as expressed above, since Kovelakuntla where the 3rd respondent Corporation has been operating an extension counter does not fall within the trading area of the petitioner distributorship, I am unable to hold that the action of the respondents 3 and 4 is in contravention of the abovesaid guidelines.

The decision of this Court in W.P.No.9787 of 2005 and batch, dated 23-1-2006 cited by the learned Counsel for the petitioner has no application to the facts on hand. In the said batch of cases, this Court was dealing with a dispute between established distributors and newly commissioned distributors and it was held that the decision taken by the Oil Companies with regard to continuance of the transfer of customers based on exclusive area of trading cannot be said to be contrary to the policy of the Union of India. Accordingly, the respective Oil Companies were directed to take necessary steps to prevent the established distributors from operating their business activities of supplying LPG within the exclusive areas of operations of the newly commissioned distributors.

The said decision has no application to the issue involved in this writ petition. As expressed above, since Kovelakuntla does not fall within the area of operation of the distributorship of the petitioner at Banaganapalli, the action of the 3rd respondent Corporation in permitting the 4th respondent to operate an extension counter at Kovelakuntla cannot be held to be illegal. Therefore, the interference by this Court is not warranted.

Accordingly, the Writ Petition is dismissed. No costs.

G. ROHINI, J.

Dt. 10–04-2006

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